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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

RAUL SIQUEIROS, TODD AND JILL CRALLEY,
LARRY GOODWIN, MARC PERKINS, THOMAS
SHORTER, GABRIEL DEL VALLE, KEVIN
HANNEKEN, EDWIN AND KATELYN DOEPEL,
JAMES FAULKNER, JOSEPH OLIVIER, SCOTT
SMITH, ROSS DAHL, DREW PETERSON,
STEVE KITCHEN, BARBARA MOLINA,
WILLIAM DAVIS, JR., MIKE WARPINSKI,
JOHN GRAZIANO, JOSHUA BYRGE, RUDY
SANCHEZ, CHRISTOPHER THACKER, JAMES
ROBERTSON, and JONAS BEDNAREK,
individually and on behalf of all others similarly
situated,

Plaintiffs,

v.

GENERAL MOTORS LLC,

Defendant.

Case No.: 16-cv-07244-EMC

**PLAINTIFFS’ RESPONSE TO GENERAL
MOTORS LLC’S MOTION TO DISMISS
COUNT ONE (MAGNUSON MOSS
WARRANTY ACT)**

Judge: Hon. Edward J. Chen
Hearing Date: September 3, 2020
Time of Hearing: 2:30 p.m.

1 Plaintiffs hereby respond to and oppose Defendant General Motors LLC's ("GM") Motion to
 2 Dismiss Count One (ECF No. 255). GM seeks dismissal of Plaintiffs' Magnuson-Moss Warranty Act
 3 ("MMWA") claims because, GM contends, that MMWA claims are not viable with less than 100 named
 4 plaintiffs. However, GM ignores the fact Plaintiffs may still proceed with their MMWA claims
 5 individually. For the reasons set forth below, Plaintiffs request that the Court deny GM's Motion and,
 6 instead, strike Count One's class allegations without prejudice and with leave to amend and replead the
 7 class allegations should the requisite number of plaintiffs assemble.

8 **LEGAL STANDARD**

9 In ruling on a motion to dismiss, a court must "accept the plaintiff's allegations as true and view
 10 them in the light most favorable to her." *Soo Park v. Thompson*, 851 F.3d 910, 918 (9th Cir. 2017).

11 **ARGUMENT**

12 On July 28, 2020, the Ninth Circuit held, for the first time, that the Class Action Fairness Act
 13 ("CAFA") "may not be used to evade or override" the MMWA jurisdictional requirements for class
 14 actions. *Floyd v. Am. Honda Motor Co.*, No. 18-55957, 2020 WL 4331769, at *6 (9th Cir. July 28, 2020)
 15 ("CAFA may not be used to evade or override the MMWA's specific numerosity requirement . . .").
 16 Plaintiffs concede Count One cannot be maintained on a class basis following *Floyd*, since there are
 17 currently less than 100 named plaintiffs. But dismissal is not appropriate because Plaintiffs still have
 18 viable individual MMWA claims.

19 "MMWA claims survive or fail with the Court's decisions regarding the implied warranty claims
 20" (ECF No. 237 at 57). This Court already determined a reasonable jury could find that GM breached
 21 its implied warranty of merchantability, and therefore also violated the MMWA. (*Id.* at 49-57). Moreover,
 22 for this Court to assert jurisdiction over an individual claim under the MMWA, the amount in controversy
 23 need only be \$25. 15 U.S.C. § 2310(d)(3)(A). As this Court has recognized, Plaintiffs have put forth a
 24 cost of repair damages model that calculates damages at \$2,700 per plaintiff. (ECF No. 237 at 82-85).
 25 Therefore, the Court has jurisdiction over Plaintiffs' individual MMWA claims. Count One should not
 26 be dismissed, but, in light of *Floyd*, Plaintiffs concede that it is appropriate to strike Count One's class
 27 allegations without prejudice and with leave to amend and replead the class allegations should the
 28 requisite number of plaintiffs assemble.

CONCLUSION

For the foregoing reasons, Plaintiffs request that the Court deny GM's Motion.

Dated: August 13, 2020

/s/ Adam J. Levitt

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ECF CERTIFICATION

Pursuant to Civil L.R. 5-1(i)(3), the filing attorney attests that he has obtained concurrence regarding the filing of this document from the signatories to the document.

Date: August 13, 2020

By: /s/ H. Clay Barnett, III
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